BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated 2nd April 1971.

Present :

Sri S. T. Kulkarni, B.A. (hons.) LL.B. *Presiding Officer.*

Complaint No. 7 of 1970
in A. I. D. No. 11/66

Complainant :

Sri. O. A. Oomen, S/o O. A. Abraham, Badge No. 161-06, HAL Bangalore Dn., Bangalore-17.

Vs.

Opposite Party :

The Management of Hindustan Aeronautics Ltd., Bangalore Division, Bangalore-17.

Appearances

For the Complainant:—Sri K. Subba Rao, Advocate, Bangalore.

For the Opposite Party :—Sri K. N. Chandrasekhar, Advocate, Bangalore.

AWARD.

This is a Complaint filed by the Complainant under Sec. 33-A of the Industrial Disputes Act, 1947, alleging that the progress increments due to him from the Opposite Party Management for the years 1965, 1966 and 1967 had been illegally withheld, and hence an award may be passed in his favour directing the Opposite Party Management to pay those increments to him retrospectively with all the arrears, and to grant such other relief or reliefs as the Tribunal might be pleased to grant.

2. The Complainant alleges that he was working in the Opposite Party concern since the year 1952, and he had joined

service as a Mechanic–C on probation in the beginning, and he was subsequently confirmed in that post as per Standing Orders of the factory which were applicable to him, and thereafter he was ptomoted as Mechanic 'B' in the first instance and then as Mechanic 'A' in the usual course, and ultimately he was appointed as a Group Leader in the year 1960, and that his service record was without any blemish throughout. He further alleges that he was working in the Tool Room Department for a year, and then he was transferred to Production Equipment Department No. 29 for about 8 years, and thereafter he was transferred to Proto type Machine Shop, and the progress increments due to him till the year 1964 had been paid to him with a delay of some days in granting the one for the year 1964 and that increments due for the years 1965 to 1967 had not at all been paid to him by putting forth some lame excuse. He also alleges that he had throughout the period of his service worked hard, and there was absolutely no reason or justification for the Management to withhold his increments for the said years and the action taken by it (Management) in this behalf was illegal and arbitrary, and that he had given an application to the Labour Court in Application No. 41/69 for the computation of annual/progress increments due to him for the said years, and that application was rejected on the ground that it (Labour Court) had no jurisdiction to grant reliefs under Section 33-C (2) of the I. D. Act. He further alleges that the withholding of increments due to him was contrary to the certified Standing Orders of the Management, and there were also no good and valid reasons at all for withholding them, as they (increments) would automatically become due in the case of grade scale and to withhold the (increments) would amount to inflicting punishment without any justifying reasons, and if at all any workman is to be deprived of such increments it shall have to be done only after giving him an opportunity of being heard. He also alleges that an Industrial dispute regarding bonus was pending before this Tribunal in A. I. D. Nos. 11/66 and 22/66, and his right in respect of those disputes would be adversely affected by his increments being withheld by the Management, and that the Management could not alter his service condition during the pendency of the said industrial dispute in view of the provisions of Sec. 33 of the I. D. Act, and hence this Complaint had to be given before this Tribunal for the grant of the various reliefs mentioned above.

3. The Opposite Party Management has filed its objections on 21st September 1970 to the effect that the Complaint was

misconceived and was not maitainable in law, and this Tribunal had no jurisdiction either to entertain or to adjudicate about it. It further contends that the payment of progress increments was not a condition of service, and the non-payment thereof does not amount to a change of conditions of service, and the Complainant cannot claim these increments as of right as they were all within the exclusive discretion of the Management, and that it is not a matter which can be the subject matter of a proceeding under Section 33A of the I. D. Act, and as such the Complaint was liable to be dismissed, on this ground only. It also contends that the allegations in paras 1 and 3 of the Complaint petition about the Complainant's service having been without any blemish throughout, and further about his transfer from one department to the other were all false and baseless, and that the allegations in para 4 to the effect that progress increments for the years 1965, 1966 and 1967 had been with held without any justifying reasons and that it was against his service conditions were also false and baseless. It further contends that the progress increments were not automatic and they could not be claimed as of right, and that the management would grant them only if the service is satisfactory, and it (Manegement) would be entitled to defer them if the workman did not merit the same, and such a right vests in it (Management) under S.O. 5 (b) of the Standing Orders. It also contends that the question whether the work of the Complainants was satisfactory and whether the grant of progress increments was justified in this case by reason of his ability, production or conduct was one entirely within the discretion of the Management, and it was not a legal right vested in the Complainant, and that the question whether the Management justifiably refused or deferred the grant of progress increment cannot be agitated in a proceeding under Section 33A of the I. D. Act, as the refusal to grant the same did not amount to a change in the condition of service. It further contends that the Complainant had filed an application in the Labour Court, Bangalore, in Application No. 41/69, and that application was rejected by that Court on the ground that it was not maintainable, and in view of this finding the allegations of the Complainant in regard to his entitlement for the progress increments were groundless, and that the grounds alleged by him (Complainant) in para 3 of the Complaint in this behalf were beseless. It also contends that it did not grant progress increments to the Complainant as his work, conduct and behaviour were unsatisfactory and further as he never interested himself in the work assigned to him, and he did not also co-operate with

the other staff members in his department and he was in the habit of going and coming to the departments according to his own choice, and there was no improvement in his work and efficiency in spite of several chances given to him. It further contends that the contentions in paras 7 and 8 of the Complain petition to the effect that there had been a change in the conditions of service etc., were false and baseless and hence all the contentions raised by him should be rejected and his complaint may be dismissed.

4. After the Opposite Party put in its objections, the Complainant put in his reply on 3rd October 1970 denying all the contentions raised in the objection statement, and further reiterating the allegations made in the Complaint petition and also praying that the contentions of the Opposite Party may be rejected and an award in terms of the Complaint petition may be passed in his favour.

5. In view of the above stated contentions of both the parties the following issues were framed on 22nd October 1970:—

1. Whether the complaint given by the Complainant is maintainable and whether this Tribunal has jurisdiction to entertain?

2. Whether the complainant proves that there was a contravention of the provisions of Section 33 of the Industrial Disputes Act, by the Opposite Party as alleged?

3. Whether the complainant further proves that the non-payment of progress increments amounts to a change in the service condition?

4. Whether the complainant is entitled progress increments having regard to the provisions of Clause 5(6) of the Standing Orders;

5. Whether the complainant proves that his conduct, ability and production during the relevant period were such as to entitle him to progress increments;

6. Whether the complaint for the non-payment of progress increments is justiciable;

7. To What relief if any, is the complainant entitl

6. At the time when these issues were framed on 22nd October 1970, it was ordered that issues Nos. 1 to 4, 6 and 7 should be heard as preliminary issues. But at the time of hearing arguments it was submitted by the learned counsel that only issues Nos. 1, 2 and 6 should be heard as preliminary issues and accordingly both the counsels were heard in their behalf. So, I have now to record my finding regarding those issues. My findings about these issues are as follows :—

1. No; No.
2. No.
6. No.

Reasons.

7. For the purpose of considering these preliminary issues the first point for consideration would be whether the Opposite Party Management has violated any of the provisions of Section 33 of the I.D. Act, as such violation or breach would be a condition precedent to the tenability of a complaint under Section 33 A, particularly as this complaint purports to have been given under the latter Section, and also as the wording of that section would show that it would come into play when there is a contravention of the former section (Sec. 33). For the purpose of deciding about this point we shall have to go into the different sub-sections of Sec. 33. So far as the provisions of sub-sections (3) and (4) thereof are concerned they cannot at all apply to the present case as they relate to the privileges available to a protected workman, and they cannot at all apply to the present case as the Complainant does not at all fall within that category of workmen. As regards the provisions of sub-section (5), it is to be noted that it does not at all refer to any particular category of workmen, but it simply provides that an application given by an employer under the proviso to sub-section (2) should be disposed of as expeditiously as possible. So we shall have to see whether the provisions of sub-sections (1) and (2) would be applicable to the Complaint in this case. These sub-sections provide as follows :—

33. Conditions of service, etc., to remain unchanged under certain Circumtances during pendency of proceedings.— (1) During the pendency of a conciliation proceeding before a conciliation officer or a Board or of any proceeding before an

Arbitrator or a Labour Court, Tribunal or National Tribunal in respect of an industrial dispute, no employer shall —

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman,

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

8. The wording of sub-section (1) is to the effect that during the pendency of a proceeding before the Tribunal and the other authorities mentioned therein, it will not be open to an employer (1) to alter the service conditions of a workman in regard to any matter connected with the dispute or (2) to punish or discharge him from service by dismissal or otherwise for any misconduct connected with the dispute. Sub-section (2) provides that during the pendency of any such proceeding, an employer may, in accordance with the standing orders or terms of contract, (1)

alter the service conditions of a workman in regard to any matter not connected with the dispute, or (2) discharge or punish him, by way of dismissal or otherwise for any misconduct not connected with the dispute, after complying with the conditions mentioned in the proviso annexed to it.

9. I will first of all consider about the question whether the complainant's case would fall within the purview of Section 33 (1) of the Act. For that purpose, it will have to be seen whether his grievance about the withholding of his increments for the year 1965, 1966 and 1967 is in any way connected with the main dispute in A.I.D. No. 11/66 on the file of this Tribunal which relates to the Bonus for the years 1963, 1964 and 1965. In the present case, we are not at all directly concerned with bonus for any of the years. In this connection, it was submitted by Sri K. Subba Rao, the learned counsel for the Complainant, that though his (Complainant's) grievance in this case in not regarding Bonus for any of the years, even then the withholding of his increments would indirectly affect his right to Bonus, as the same (Bonus) shall hall have to be computed on the basis of his wages for the particular years, and as such his grievance in this case would be connected with the main dispute, and consequently, his case would fall within the purview of Sec. 33(1) of the I.D,. Act. Regarding this point, it was submitted by Sri K.N Chandrasekhar, the learned counsel for the Opposite Party that something could have been said in favour of the Complainant in this respect if the years for which the increments had been withheld were exactly the same as those for which Bonus had been claimed in the main dispute So far as the years 1963 and 1964 are concerned, they are completely different from the years (1965 to 1967) for which the increments had been withheld by the Management. As regards the year 1965, there is absolutely no allegation in the pleadings or evidence on record to show on what date the increment for that year would become due, and further as to from what date to what date Bonus for that year (1965) was to be computed and in the absence of any such material on record, it would be rather difficult to say that the bonus for that year (1965) would be dependent on the increment that would become due in that year. In such matters, the burden would be on the complainant himself to show that there was some connection between the main dispute and the withholding of his increments for the years in question, and there is absolutely no allegation or evidence about it on his behalf. Under these circumstances, it would

be rather difficult to say that the Bonus for the years 1963 to 1965 would be dependent on or connected with the increments becoming due for the years 1965 to 1967.

10. In this connection, Sri K. N. Chandrasekhar for the Opposite Party brought to my notice a Ruling of the Rajasthan High Court reported in 1959 (I) L.L.J. p 282 (Pali Electricity Co. Ltd. vs. Industrial Tribunal and another) in which almost a similar question was involved. The grievance of the workman concerned in that case was that his wage had been reduced for the year 1956-57, and as a result thereof the Bonus due to him in the main dispute would be affected. The main dispute in that case was concerning the bonus for the years 1953-54 and 1954-55, which were earlier to the year (1956-57) for which the wages had been reduced, and hence it was held that the grievance of the workman in the Complaint Petition given under Section 33-A of the I.D. Act, was not connected with the main dispute within the meaning of Section 33 (1) (a) of the I.D. Act, and consequently the complaint petition given by him under Section 33-A was held to be incompetent, and was dismissed. As the question involved in the present case is almost similar to the one involved in the said case I think that the principle laid down therein can as well as be made applicable to the case. So, I think that the Complainant in this case cannot be said to be a workman concerned in the main dispute in A. I. D. 11/66 on the file of this Tribunal. So my conclusion is that the present case would not fall within the perview of Section 33 (1) of the I. D. Act.

11. I will then come to the question whether the present case would fall with in the purview of Section 33 (2) of the I. D. Act. This sub-section provides that it would be open to an Employer (1) to alter the service conditions of a workman in regard to any matter not connected with the dispute, or (2) discharge or punish him whether by dismissal or otherwise for any misconduct not connected with the dispute. As withholding the increments f the Complainant for some years would not and cannot amount to discharging or punishing him for any misconduct and further as it (withholding increments) cannot also be said to be a matter connected with the main dispute, as already stated above. I think that the present dispute would not fall within the purview of Section 33 (2) of the I. D. Act.

12. It would appear from the above discussion that the grievance of the Complainant about the Opposite Party Management

having not granted some of the increments alleged to be due to him would not of all amount to the violation of any of the conditions of Section 33 of the I. D. Act. It would further appear that the violation of one or the other conditions of that section is a condition precedent to the tenability of such a complaint under Section 33A of the Act, and as no such violation can be said to have taken place in the present case. as already stated above, a complaint under the latter section (Section 33A) would not be legally tenable, and as such it (complaint) would be liable to be dismissed only on this account.

13. In view of the conclusion arrived at obeve. I think that it would not be necessary for me to go into the other conceptions of the Complainant. Even then I will just cursorily refer to some of the other contentions raised on his behalf. Sri K. Subba Rao for the Complainent drew my altention to Section 9A and also to Items Nos. 1, 7 and 8 of the Fourth Schedule of the I. D. Act, and further to the definition of the term 'wages' given in Section 2 (rr) of that Act, and argued that if the Opposite Party Management wanted to deprive him of the increments in question they ought to have issued a notice to him and also given an opportunity of being heard before doing so. Section 9A provides that an employer who proposes to effect to any changes in the service conditions of any worman in respect of any matter specified in the IV Schedule shall not do so without giving notice about the same to him (workman). Item No. 1 of the said schedule relates to wages including the period and mode of payment and Item No. 7 relates to classification of grades, and Item No. 8 relates to withdrawal of any customary concession or privilege or change in usage. Section 2(rr) of the Act defines 'wages' as all remuneration capable of being expressed in terms of money, which would, if the terms of employment were fulfilled, be payable to a workman, and they would include (1) such allowances (including D. A.) as the workman is for the time being entitled to (2) the value of any house accommodation, etc., and (3) any travelling concession etc. If all these provisions are read together it would appear that the protection embodied therein would apply only to the allowances etc., to which the workman is for the time being entitled, and that it would not at all apply to any future increments, which would not automatically become due, but would depend upon certain circumstances *i. e.*, about his (workman's) work being satisfactory, and about the satisfaction of the Management in that behalf. Something could have been said in favour of the complainant if he was auto-

matically entitled to increments in his time scale. But the wording of S. O. 5(b) of the Standing Orders of the company would clearly go to show that he is not entitled to any such right, and that the accrual of his increments would be depended upon his work etc., being satisfactory and upon the Management being satisfied about the same. I cannot, therefore, attach much importance to this point urged on his (Complainant's) behalf.

14. Sri K. Subba Rao also brought to my notice Rulings of the Labour Appellate Tribunal of India (at Ahmedabad and Bombay respectively) reported in 1956 (I) L. L. J. page 103 (Rasiklal Nanalal Joshi *vs.* Bank of Baroda Ltd.,) and 1956 (I) L. L. J. page 346 (Subramaniam P.S.) and others *vs.* International General Electric Company (India) Ltd., In both of these cases no question was involved about Sections 33 and 33A of the I. D. Act, as they are under Sections 22 and 23 of the Industrial Disputes (Appellate Tribunal) Act. In both of these cases it has been held that during the pendency of an Appeal before the Appellate Tribunal, the Management could not withhold the increment which had accrued to him during that period. From the facts of these cases, it appears that the Management had not been given any discretion in granting or withholding the increments and there was also no condition attached to the accrual thereof, and as such the (increments) appear to have become automatically payable to the concerned workman at the end of the respective periods. Under these circumstances, I think that these Rulings cannot be of any great help to the Complainant in this case.

15. Regarding these Rulings it was submitted by Sri K. N. Chandrasekhar for the opposite Party that they (Rulings) cannot be of any great help to the Complainant as they were of a single Judge of the Labour Appellate Tribunal, and further as they had not considered or referred to an earlier Division Bench decision of that very Tribunal (at Bombay) reported in 1955 (I) L. L. J. p. 636 (R. K. Nathan vs. Bennet Coleman & Co.) In this Ruling during the pendency of an Appeal before the Labour Appellate Tribunal the Management of a company had withheld an increment due to a workman as per wage scale in force on the ground that it (Company) could withhold the same in certain circumstance. Thereafter an application was given by that workman under Section 23 of the Industrial Disputes (Appellate Tribunal) Act, praying for relief against the action of the Management, and it was held that such an application would be incompetent as withholding an increment could not be considered to be an alteration in conditions of services. It was further held that even if scale of

pay could be considered to be a condition of service there was no alteration of the scale of wages in that case, and that the dispute must be held to be one which could be decided only by the Civil Court, and not by an application under Section 33 of the said Act. It would be clear from this Ruling that the principal laid down therein is definitely helpful to the opposite Party in this case. As this is an earlier Ruling of a Division Bench of the same Tribunal and further as it was not even referred to or discussed in the two subsequent single member Rulings of that Tribunal, relied upon by the Complainant, I think that the said Division Bench Ruling would be entitled to greater weight than than the other two Rulings of a single member. In this connection Sri K. N. Chandrashekhar for the Oppo-ite Party also brought to my notice a decision of the High Court of Bombay reported in 1960 (II) L. L. J. p. 891 (Nagpur Glass Works, Ltd., vs. Regional Provident Fund Commissioner) in which it has been held at Page 311 that a decision by a Single Judge has not the same authority as that by a larger Bench. Taking all these factors into account my conclusion is that the Ruling in 1955 (I) L. L. J. p. 636, which has been relied upon by the learned counsel for the Opposite Party shall have accepted as better authority than the other two Rulings relied upon on behalf of the Complainant.

16 In view of the above discussion, my conclusion is that the present Complaint Petition which has been filed under Section 33A of the I. D. Act, would not at all be legally tenable, and this Tribunal cannot have any jurisdiction to proceed with the same. It is further clear that the Complainant has not been able to show that there was a contravention of any of the provisions of Section 33 of the I. D. Act, and that the grievance of the Complainant for the non-payment of progress increments is not justiciable. So I answer both the parts of issue No. 1, and also issue Nos. 2 and 3 in the negative. In view of these findings, the Complaint shall have to be dismissed as being not tenable, and an Award shall have to be passed accordingly. Hence I pass the following Award :—

AWARD

Complaint is dismissed as being not tenable in view of the findings recorded above.

No order as to costs.

S. T. KULKARNI,
Presiding Officer,
Additional Industrial Tribunal
Bangalore.